DIVISION OF ADULT INSTITUTIONS CENTRAL CALIFORNIA WOMEN'S FACILITY 23370 ROAD 22 CHOWCHILLA, CA 93610-1501 (550) 665-5531



## **NOTICE OF ADVERSE ACTION**

Sergio Rios Correctional Officer Central California Women's Facility 23370 Road 22 Chowchilla, CA 93610-1501

Officer Rios:

You are hereby notified that, pursuant to Government Code section 19574, adverse action is being taken against you as follows:

I.

## NATURE OF THE ACTION

You are hereby dismissed from your State civil service position as a Correctional Officer with the California Department of Corrections and Rehabilitation (CDCR) at Central California Women's Facility (CCWF).

II.

#### **EFFECTIVE DATE**

The dismissal will be effective at the close of business on December 15, 2017.

III.

## STATEMENT OF CAUSES

This adverse action is being taken against you for the causes set forth in the following subsections of Government Code section 19572:

(m) Discourteous treatment of the public or other employees;

This adverse action is also founded upon:

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- a. California Code of Regulations (CCR), Title 15, section 3270, General Policy;
- b. CCR, Title 15, section 3271, Responsibility of Employees;
- c. CCR, Title 15, section 3291, Employee Law Enforcement and Peace Officer Personnel:
- d. CCR, Title 15, section 3391, Employee Conduct;
- e. CCR, Title 15, section 3399, Transactions;
- f. CCR, Title 15, section 3400, Familiarity;
- g. CCR, Title 15, section 3401.5, Staff Sexual Misconduct;
- h. CDCR Operations Manual (DOM), section 31140.5, Employee Expectations and Reporting:
- i. DOM, section 31140.5.1, Employee Duty to Cooperate;
- j. DOM, section 33030.3.1, Code of Conduct;
- k. DOM, section 33030.3.2, General Qualifications; and
- I. DOM, section 33030.3.3, Law Enforcement Code of Ethics.

IV.

## STATEMENT OF THE FACTS

On or about March 10, 2003, you became, and at all times mentioned herein have been, a civil service employee of the State of California. At all times relevant to this action, you held and occupied the position of Correctional Officer with CDCR at CCWF. During your tenure with CDCR, you have received ongoing training on various work-related topics including, but not limited to ethics and professionalism, code of conduct, job expectations, sexual misconduct reduction policy, inmate/staff relations, crime scene preservation, report writing, and prison rape elimination.

Between in or about November 2015, and in or about January 2016, you were assigned to work as Floor Officer #1 in Facility B4, Building Post Number 121521, during First Watch, which is defined as 2200 to 0600 hours (10:00 p.m. to 6:00 a.m.). Post Order #121521 (revised November 2014) described your assignment and duties, in pertinent part, as follows:

# **GENERAL DUTIES AND RESPONSIBILITIES**

General duties and responsibilities include, but are not limited to the following:

. . . .

You are responsible for preventing and reporting escapes, assaults, destruction of state property, and all unusual occurrences in your area. . . . At the beginning and end of your shift, you shall inventory equipment, tools, and chemical supplies located in your area of responsibility and report any discrepancies to the Sergeant or Lieutenant assigned to the area immediately.

## SPECIAL INSTRUCTIONS

## 1. POLICIES

You will have thorough knowledge of Departmental/Institutional Policies and Procedures. Confidential Institutional Department Operations Manual (DOM) Supplements, Policies, and Procedures can be accessed in the Warden's Suite, the Custody Captain's Office, and in Central Control. Non-Confidential Institutional DOM Supplements, Policies, and Procedures can be accessed by following the link listed below on the Local Area Network (LAN)/institutional share drive:

S:/Public/Policies Procedures . . . .

The California State Personal Board Job Specification for the Correctional Officer position (revised 5/2/1995) describes your tasks, in pertinent part, as follows:

In a correctional institution . . . assignment: . . . . promotes acceptable attitudes and behavior of inmates or parolees; . . . reports infractions of rules and regulations and irregular suspicious occurrences, and takes or recommends appropriate action; . . .

At all times relevant to this action, you had received training upon, and were familiar with CCR, Title 15, section 3400, Familiarity, which provides:

Employees must not engage in undue familiarity with inmates, parolees, or the family and friends of inmates or parolees. Whenever there is reason for an employee to have personal contact or discussions with an inmate or parolee or the family and friends of inmates and parolees, the employee must maintain a helpful but professional attitude and demeanor. Employees must not discuss their personal affairs with any inmate or parolee.

Further, at all times relevant to this action, you had received training upon, and were familiar with CCR, Title 15, section 3401.5, Staff Sexual Misconduct, which provides, in pertinent part:

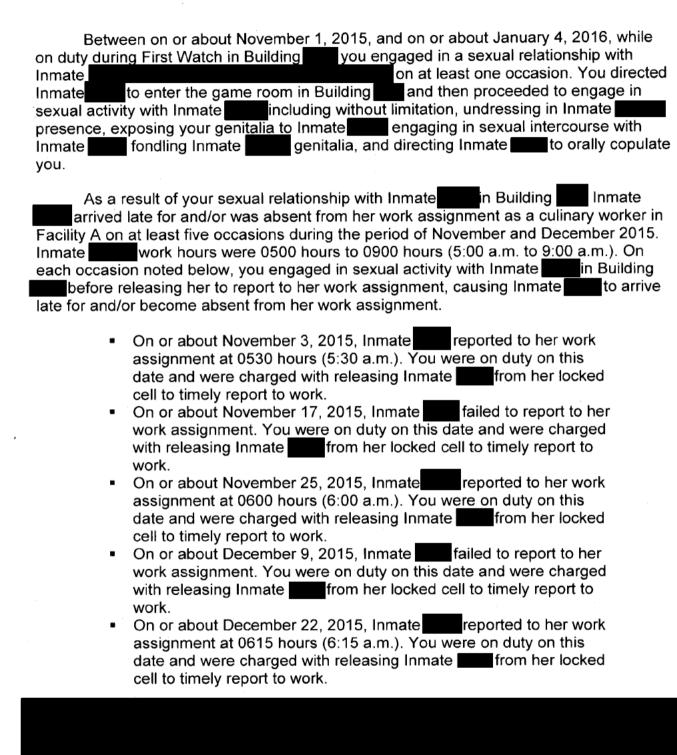
(a) For the purposes of this section, staff sexual misconduct means any sexual behavior by a departmental employee, volunteer, agent or individual working on behalf of the Department of Corrections and Rehabilitation, which involves or is directed toward an inmate or parolee. The legal concept of "consent" does not exist between departmental staff and inmates/parolees; any sexual behavior

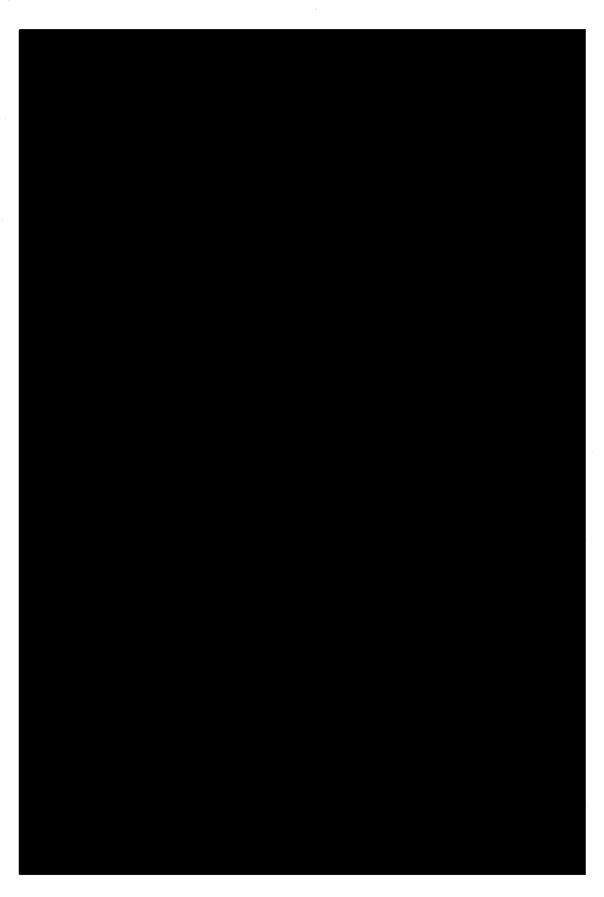
between them constitutes sexual misconduct and shall subject the employee to disciplinary action and/or to prosecution under the law.

Sexual misconduct includes, but is not limited to:

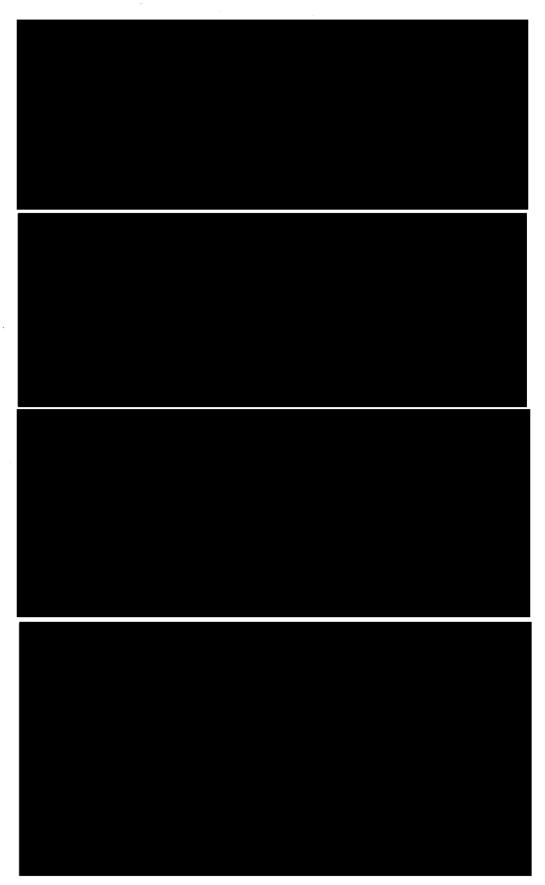
- (1) Influencing or offering to influence an inmate's/parolee's safety, custody, housing, privileges, parole conditions or programming, or offering goods or services, in exchange for sexual favors; or
- (2) Threatening an inmate's/parolee's safety, custody, housing, privileges, work detail, parole conditions or programming because the inmate/parolee has refused to engage in sexual behavior; or
- (3) Engaging in sexual act(s) or contact, including:
- (A) Sexual intercourse; or
- (B) Sodomy; or
- (C) Oral Copulation; or
- (D) Penetration of genital or anal openings by a foreign object, substance, instrument or device for the purpose of sexual arousal, gratification, or manipulation; or
- (E) Rubbing or touching of the breasts or sexual organs of another or of oneself, in the presence of and with knowledge of another, for the purpose of sexual arousal, gratification, or manipulation; or
- (F) Invasion of privacy, beyond that reasonably necessary to maintain safety and security; or disrespectful, unduly familiar, or sexually threatening comments directed to, or within the hearing of, an inmate/parolee.
- (4) Display by staff, in the presence of an inmate, of the staff person's uncovered genitalia, buttocks, or breast;
- (5) Voyeurism by a staff person including volunteers or independent contractors. Voyeurism is defined as an invasion of privacy of an offender by staff for reasons unrelated to official duties.
- (b) Penalties. All allegations of staff sexual misconduct shall be subject to investigation, which may lead to disciplinary action and/ or criminal prosecution.
- (c) Reporting Requirements. Any employee who observes, or who receives information from any source concerning staff sexual misconduct, shall immediately report the information or incident directly to the hiring authority, unit supervisor, or highest-ranking official on duty. Failure to accurately and promptly report any incident, information or facts which would lead a reasonable person to believe sexual misconduct has occurred may subject the employee who failed to report it to disciplinary action.

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Officer employed by CDCR.



As an employee of CDCR, you are expected to perform your duties efficiently and professionally. Your duties and responsibilities include the requirement that, as a peace officer, your conduct be ethical and above reproach at all times. You are held to the highest standards, and it is incumbent upon you to use good judgment and maintain an unassailable level of conduct, consistent with the standards by which a peace officer is expected to comport him/herself. Your duties and responsibilities also include the requirement that your conduct not bring discredit upon your department.

Your conduct, as described with particularity above, did not meet the standards expected of a Correctional Officer. Between in or about November 1, 2015, and on or about January 4, 2016, you inexcusably neglected your duties when you engaged in a sexual and overly familiar relationship with Inmate By engaging in sexual behavior with an inmate, you did so without consent as the legal concept of "consent" does not exist between CDCR staff and inmates. You were specifically charged with protecting Inmate and other inmates at CCWF from bodily and emotional harm. You recklessly and needlessly jeopardized the safety and security of your fellow staff, inmates, the general public, and yourself, and senselessly subjected CDCR to potential liability for your actions.

Your conduct has brought discredit upon you, your hiring authority, and CDCR, thereby impeding your ability to perform your duties in a credible, efficient, and effective manner. Such conduct is not acceptable and will not be tolerated from a Correctional

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## **VIOLATIONS**

Your actions, set forth and described above, constitute violations of, but are not necessarily limited to Government Code section 19572, subdivisions (m),

Your actions, set forth and described above, also constitute violations of the following.

a. CCR, Title 15, section 3270, General Policy, which provides:

The primary objectives of the correctional institutions are to protect the public by safely keeping persons committed to the custody of the Director of Corrections, and to afford such persons with every reasonable opportunity and encouragement to participate in rehabilitative activities. Consistent effort will be made to insure the security of the institution and the effectiveness of the treatment programs within the framework of security and safety. Each employee must be trained to understand how physical facilities, degree of custody classification, personnel, and operative procedures affect the maintenance of inmate custody and security. The requirement of custodial security and of staff, inmate and public safety must take precedence over all other considerations in the operation of all the programs and activities of the institutions of the department.

b. CCR, Title 15, Section 3271, Responsibility of Employees, which provides:

Every employee, regardless of his or her assignment, is responsible for the safe custody of the inmates confined in the institutions of the department.

- c. CCR, Title 15, section 3291, Employee Law Enforcement and Peace Officer Personnel, which provides, in pertinent part:
  - (a) Law Enforcement Responsibility. All employees of the Department shall be responsible to enforce laws, regulations and procedures which govern the actions and activities of inmates, parolees and of persons who come into contact with inmates and parolees. . . .
- d. CCR, Title 15, section 3391, Employee Conduct, which provides:
  - (a) Employees shall be alert, courteous, and professional in their dealings with inmates, parolees, fellow employees, visitors and members of the public. Inmates and parolees shall be addressed by their proper names, and never by derogatory or slang reference. Prison numbers shall be used only with names to summon inmates via public address systems. Employees shall not use indecent, abusive, profane, or otherwise improper language while on duty. Irresponsible or unethical conduct or conduct reflecting discredit on themselves or the department, either on or off duty, shall be avoided by all employees.

e. CCR, Title 15, section 3399, Transactions, which provides:

Employees shall not directly or indirectly trade, barter, lend or otherwise engage in any other personal transactions with any inmate, parolee or person known by the employee to be a relative of an inmate or parolee. Employees shall not, directly or indirectly give to or receive from any inmate, parolee or person known by the employee to be a relative or an inmate or parolee, anything in the nature of a tip, gift or promise of a gift.

f. CCR, Title 15, section 3400, Familiarity, which provides:

Employees must not engage in undue familiarity with inmates, parolees, or the family and friends of inmates or parolees. Whenever there is reason for an employee to have personal contact or discussions with an inmate or parolee or the family and friends of inmates and parolees, the employee must maintain a helpful but professional attitude and demeanor. Employees must not discuss their personal affairs with any inmate or parolee.

- g. CCR, Title 15, section 3401.5, Staff Sexual Misconduct, which provides, in pertinent part:
  - (a) For the purposes of this section, staff sexual misconduct means any sexual behavior by a departmental employee, volunteer, agent or individual working on behalf of the Department of Corrections and Rehabilitation, which involves or is directed toward an inmate or parolee. The legal concept of "consent" does not exist between departmental staff and inmates/parolees; any sexual behavior between them constitutes sexual misconduct and shall subject the employee to disciplinary action and/or to prosecution under the law.

Sexual misconduct includes, but is not limited to:

- (1) Influencing or offering to influence an inmate's/parolee's safety, custody, housing, privileges, parole conditions or programming, or offering goods or services, in exchange for sexual favors; or
- (2) Threatening an inmate's/parolee's safety, custody, housing, privileges, work detail, parole conditions or programming because the inmate/parolee has refused to engage in sexual behavior; or
- (3) Engaging in sexual act(s) or contact, including:
- (A) Sexual intercourse; or
- (B) Sodomy; or
- (C) Oral Copulation; or

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- (D) Penetration of genital or anal openings by a foreign object, substance, instrument or device for the purpose of sexual arousal, gratification, or manipulation; or
- (E) Rubbing or touching of the breasts or sexual organs of another or of oneself, in the presence of and with knowledge of another, for the purpose of sexual arousal, gratification, or manipulation; or
- (F) Invasion of privacy, beyond that reasonably necessary to maintain safety and security; or disrespectful, unduly familiar, or sexually threatening comments directed to, or within the hearing of, an inmate/parolee.
- (4) Display by staff, in the presence of an inmate, of the staff person's uncovered genitalia, buttocks, or breast:
- (5) Voyeurism by a staff person including volunteers or independent contractors. Voyeurism is defined as an invasion of privacy of an offender by staff for reasons unrelated to official duties.
- (b) Penalties. All allegations of staff sexual misconduct shall be subject to investigation, which may lead to disciplinary action and/ or criminal prosecution.
- (c) Reporting Requirements. Any employee who observes, or who receives information from any source concerning staff sexual misconduct, shall immediately report the information or incident directly to the hiring authority, unit supervisor, or highest-ranking official on duty. Failure to accurately and promptly report any incident, information or facts which would lead a reasonable person to believe sexual misconduct has occurred may subject the employee who failed to report it to disciplinary action.

h. DOM, section 31140.5, Employee Expectations and Reporting, which provides:

Each employee, regardless of classification or rank, shall adhere to the Department's Employee Performance Standards as defined in DOM, Section 3, Article 22, Subsection 33030.3. Each employee shall report misconduct or any unethical or illegal activity in a timely manner. Failure to report employee misconduct or any unethical or illegal activity in an investigation or allegation inquiry shall be grounds for corrective action, disciplinary action, or both. Employees shall not make false statements when questioned, interviewed, or in reports submitted.

i. DOM, section 31140.5.1, Employee Duty to Cooperate, which provides:

Each employee of the CDCR is required to comply and cooperate as follows:

- If requested to make a statement in any official internal investigation conducted by the Department, employees shall make full, complete, and truthful statements. Failure or refusal to make statements or making false statements during Department Internal Affairs investigations may result in disciplinary action.
- Employees shall not take any action which would interfere with, delay, distort or unduly influence any official investigation conducted by the Department or any other government agency. Any employee who knowingly gives false evidence, . . . may be subject to disciplinary action.
- Employees have a duty to cooperate with investigators of the Department and with officials from other law enforcement agencies who are conducting a criminal investigation.
  Employees shall make full, complete, and truthful statements.
  Failure to cooperate may result in disciplinary action.
- j. DOM, section 33030.3.1, Code of Conduct, which provides:

As employees and appointees of the Department, we are expected to perform our duties, at all times, as follows:

- Demonstrate professionalism, honesty, and integrity;
- Accept responsibility for our actions and their consequences;
- Appreciate differences in people, their ideas, and opinions;
- Treat fellow employees, inmates, wards, parolees, victims, their families, and the public with dignity and respect;
- Respect the rights of others and treat them fairly regardless of race, color, national origin, ancestry, gender, religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or political affiliation;
- Comply with all applicable laws and regulations;
- Report misconduct or any unethical or illegal activity and cooperate fully with any investigation.
- k. DOM, section 33030.3.2, General Qualifications, which provides:

All employees are subject to the requirements as specified in the California Code of Regulations (CCR), Title 2, Section 172, General Qualifications, which states the following:

All candidates for, appointees to, and employees in the state civil service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, willingness and ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment, and a state of health, consistent with the ability to perform the assigned duties of the class.

I. DOM, section 33030.3.3, Law Enforcement Code of Ethics, which provides:

Peace officers employed by the Department are held to a higher standard of conduct on and off duty, as specified in the Law Enforcement Code of Ethics and the peace officer oath. The Law Enforcement Code of Ethics is as follows:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all people to liberty, equality and justice.

I will keep my public and private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my Department. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, organizational associations or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

Confidential information received in my official capacity shall remain undisclosed unless disclosure is necessary in the performance of my duty. I will never engage in acts of corruption, bribery, insubordination or the obstruction of justice, nor will I condone such acts by other peace officers. I will

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> immediately report acts of misconduct by staff of my department and cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

> I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am serving as a law enforcement officer. I will constantly strive to achieve these objectives and ideals, dedicating myself before all present to my chosen profession... law enforcement.



VII.

#### APPEAL RIGHTS

# 1. Right to Respond to Appointing Power

Pursuant to State Personnel Board Rule 52.6 (*Skelly* Rule), you are entitled to at least five (5) working days within which to respond to this proposed notice. You may respond orally or in writing prior to close of business on December 15, 2017. If you wish to respond you may do so to:

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Name:

Janel Espinoza, Warden

c/o Anthony Bacci,

**Employee Disciplinary Officer** 

Address:

Central California Women's Facility

23370 Road 22

Chowchilla, CA 93610-1501

Telephone

(559) 665-6013

You are entitled to a reasonable amount of State time to prepare your response to the charges. You are not entitled to a formal hearing with examination of witnesses at this stage of the proceedings. However, another may represent you in presenting your response. The appointing power may sustain, amend, modify, or revoke the adverse action in whole or in part.

# 2. Right to Appeal to the State Personnel Board

Regardless of whether you respond to these charges to the appointing power, you are advised that you have the right to file a written answer to this notice with the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, not later than thirty (30) calendar days after the effective date of this action. An answer shall be deemed to be a request for hearing or investigation as provided in Section 19575 of the Government Code. If you answer as provided, the Board or its authorized representative shall, within a reasonable time, hold a hearing and shall notify the parties of the time and place thereof. If you fail to answer within the time specified, the adverse action taken by the appointing power shall become final.

You are responsible for notifying the State Personnel Board and your appointing power of any changes in your address that occur after the effective date of this adverse action.

# 3. Right to Inspect Documents

Copies of any documents or other materials giving rise to this adverse action are attached for your inspection. This documentation is not being provided to the State Personnel Board in advance of any appeal hearing that may be scheduled.

VIII.

## **IMPORTANT NOTICE**

You have been served with an action that may result in a lapse of benefit coverage (health, dental, and vision), and the nonissuance of other payments made by payroll deduction (e.g. credit union deductions for mortgage/car payments, 401K, life insurance, etc.). The impact this action will have is dependent on several factors and can only be determined by the personnel office staff who is responsible for your pay and benefits.

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It is recommended that you contact your personnel office immediately to learn what impact (if any) this action will have on your payroll deductions (including benefit premiums) and what entitlement/options you have for continuing those benefits/payments should you choose to do so.

IX.

## SEPARATE AND DISTINCT RIGHTS

Your Right to Respond to the Appointing Power prior to the effective date of this Action as stated above is separate and distinct from your Right of Appeal to the State Personnel Board as stated above. You may exercise both rights as long as you do so within the time limits provided.

Date:

Janel Espinoza, Warden (A)

Attachment: List and copies of supporting materials